IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

No.

SOLOMON G. SALOMON,

Petitioner,

—against—

THE CITY OF NEW YORK, *et al.*,

Respondents.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI AND OTHER WRITS AS IN THE OPINION OF THE SUPREME COURT OF THE UNITED STATES ARE FITTING.

Opinions.

No opinion was entered by the Circuit Court of Appeals, for the Second Circuit, in connection with its order summarily affirming the order of the court below it (Rec., fols. 52-53). The opinion and order of the District Court which were so affirmed are printed at folios 42 to 45 of the Record (pp. 38 to 40).

The affirmed opinion, (and order), relies on the District Court's order of August 25, 1941, discharging Interborough Receiver Murray, (Rec., fols. 21 and 22) and its opinion and decision of October 21, 1941, (Rec., fols. 26 to 28) to deny my petition (Rec., fols. 23 to 25) to amend said order of August 25, 1941.

Jurisdiction.

Writ of certiorari is prayed pursuant to the authority of Section 240 of the Judicial Code and other writs as in the opinion of this Court are fitting, are prayed pursuant to this Court's authority under Section 262 of the Judicial Code.

The reasons relied on for the exercise by this Court of its judicial powers under the cited sections of the Judicial Code have been stated under the appropriate sub-heading of the petition (p. 42).

Specifications of Error.

1. That the Circuit Court of Appeals for the Second Circuit erred in applying Supreme Court Rule 7,4 otherwise than in accordance with the intent and spirit thereof, in a manner repugnant to settled principle and custom, and by abusing its discretion, if any, in such cases.

2. That said court erred in not applying an informed judgment, informed if it wished to be informed by the affidavit printed at folios 46 to 51; and capable of being further informed by calling for the originals of the papers exhibited herewith as Appendices F, G and H.

3. That said court erred in not applying Section 24, subdivision 3, of the Rapid Transit Act, to the questions which it should have considered and decided.

4. That said court erred in not deciding the unanswered questions of the District Court's authority over the contract whereby The City of New York contracted to acquire securities of the Manhattan Railway Company and Interborough Rapid Transit Company.

5. That said court erred in not deciding that the District Court, after the decision and mandate in *Murray* v.

Roberts had no right to have proceedings for the foreclosure and sale of the Manhattan assets under the Manhattan Consolidated Mortgage, and in not deciding that the foreclosure and sale had, are null and void as against Manhattan Railway Company, your petitioner and others similarly situated.

Statement of the Case.

The statement of the case is contained in the Foreword and Statement of the Case in the petition.

Argument.

Errors 1 and 2.

It is submitted, that Supreme Court Rule 7,4, on its face, is intended to be applied only in a case where the appeal is taken for delay only, or that the questions on which the decision of the cause depends are so unsubstantial as to need no further argument.

Decisions as to unanswered questions concerning application of state law, and concerning the authority and jurisdiction of the court below as to the matters wherein it has had proceedings and the validity of its orders and decrees issued in such proceedings, obviously, are not to be considered unsubstantial, especially where these questions are involved in the question of *res adjudicata*. The principles and usage applicable in such cases are so well known to this Court that it is unnecessary to cite any cases or authorities.

Besides, the record is barren of any showing that your petitioner's appeal was taken for delay only.

Therefore the Circuit Court erred in summarily affirming the order of the court below it, without informing itself as to the actual case; where it could have informed itself, had it heeded the affidavit before it and printed at folios 46 to 51 of the Record, and examined the originals of Appendices F, G and H.

Error 3.

The principle and usage of applying the law of the state applicable in the case is too well established to need citation of law or authority.

Therefore the Circuit Court erred in failing to apply Section 24 of the Rapid Transit Act where the District Court failed to do so.

Error 4.

The principle and usage that jurisdiction or authority of a contract is not to be assumed by a court where there is no action and merely on the solicitation of the parties thereto is firmly established in the jurisprudence of this nation.

The principle that a court has no jurisdiction or authority when these are vested by law of a state in a state administrative body is also firmly established so as to require no citations.

Therefore the Circuit Court erred in failing to pass on the questions of authority and jurisdiction which were squarely put before it.

Error 5.

After the decision and mandate in *Murray* v. *Roberts* (103 F. (2d) 889) it was contrary to established principle and usage, for the District Court to have any proceedings not within the spirit and letter of the said decision and mandate, in respect to the Interborough Equity Receivership and the ancillary Manhattan receivership. *Pocono Rubber Cloth Co.* v. *J. A. Livingston Inc.* (92 F. (2d) 290, 291) and cases cited therein.

The foreclosure and sale of the Manhattan assets are, admittedly, in pursuance of the so-called Unification Plan,[n1] and not in pursuance of the mandate in *Murray* v. *Roberts*. The Plan did not exist at the time of the mandate.[n2]

n1 - 122 F 2d, 454 at pp 456 and 7.
n2 - 122 F 2d, 454 at p 456

Therefore the Circuit Court erred in not enforcing its mandate in *Murray* v. *Roberts* (Appendix B) and not vacating the foreclosure and sale of the Manhattan assets.

CONCLUSION.

It is respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers in order that all the errors of the Circuit Court and the District Court be corrected, as prayed for in your petitioner's petition.

Respectfully,

SOLOMON G. SALOMON,
Pro se.